(3)

Head

IN THE HIGH COURT OF JUDICATURE AT BILASPUR,C.G.

W.P. No. 1959 /2003

Single Bench

PETITIONER : Dayashankar Sahu, S/o Devsharan Sahu, aged about 28 years, occupation agriculture R/o village Chandrapur, Tahsil Surajpur, Distt.Surguja(C.G.).

VERSUS

RESPONDENTS :

1) State of Chhattisgarh through Secretary, Panchayat Department D.K.S. Bhawan Raipur (C.G.).

2) Chief Executive Officer, Janpad Panchayat Surajpur, Tahsil Surajpur, Distt.Surguja (C.G.).

3) Ram Gyan Singh, S/o Parshuram Singh, aged about 30 years, occupation ex-sarpanch, R/o village Chandrapur, Tahsil Surajpur, Distt.Surguja(C.G.).

4) Subhas Chandra Bansal, S/o Telu Ram Bansal, aged about 50 years, occupation Up-sarpanch, R/o village Chandrapur, Tahsil Surajpur, Distt. Surguja(C.G.)

5) Sukhraj S/o Sayani Ram, aged about 60 years, occupation agriculture, R/o village Champak Nagar, Tahsil Surajpur, Distt.Surguja (C.G.).

6) The Collector Surguja, (Ambikapur) C.G.

P.R. No. 1959/03
Presented by Shri A.N. Pandey
dated 02.09.03

RECEIVED COPY,
CLERK TO A.G. BILASPUR

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

1) Particulars of the petitioner :

As mentioned in the cause title above.

2) Particulars of the Respondents :

As mentioned in the cause title above.

XI-HC-22

(62)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक W.P. 1959 सन् 2003

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

21.9.2006

Shri A.K.Shukla, counsel for the petitioner.

Shri Arun Sao, Government Advocate for the State/ respondents 1, and 6.

Shri Rahul Mishra, counsel for respondents No.3, 4 & 5.

None for respondent No.2.

Heard finally with the consent of the parties.

Order dictated as follows:

ORAL ORDER
(21.9.2006)

The petitioner, namely- Dayashankar Sahu, who was appointed as a Panchayat Karmi of Gram Panchayat, Chandrapur, Tehsil Surajpur, Distrcit-Surguja (CG) and was later on, declared as a Secretary of the said Gram Panchayat by the Collector, has challenged his removal on account of a resolution passed by the Gram Sabha, contained in Annexure P-1. He has further challenged the order passed by the Collector in the capacity of appellate authority on 28.2.2003 (Annexure P-6).

The brief facts are that this petitioner was appointed as a Panchayat Karmi of Gram Panchyat Chandrapur on 21.8.1996 (Annexure P-2). Later on, he was declared as a Secretary of the aforesaid Gram Panchayat by an order dated 7.8.1999, passed by the Collector, Surguja in exercise of his powers, conferred under Section 69 (1) of the Panchayat Raj Adhiniyam, 1993

(63)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक W.P. 1959 **सन्** 2003

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 2 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

(Annexure P-3). It appears that by a resolution of the Gram Panchayat dated 20.11.2001, the petitioner was removed from the post of Panchayat Karmi and an order to this effect was issued by the Sarpanch of the Gram Panchayat on 30.11.2001. Against the aforesaid resolution and order, passed by the Gram Panchayat and Sarpanch, the petitioner filed an appeal before the Sub-Divisional Officer vide Revenue Appeal No.3-A/89/2001-2002. This appeal was decided on 15.4.2002 and the resolution, passed by the Panchayat as well as the order passed by the Sarpanch regarding removal of the petitioner from the post of Panchayat Karmi was set aside by the S.D.O. Against the said order passed by the S.D.O., the Sarpanch of Gram Panchayat preferred an appeal before the Collector vide case No. 45-A/89/2002-2003. This appeal was decided by an order dated 28.2.2003(Annexure P-6). This appeal was allowed in part. The Collector recorded a finding that the order of the S.D.O. is kept as it is. However, it was directed that a Special Meeting of Gram Sabha be called and the proposal in relation to removal of the petitioner be considered in the said Meeting and appropriate steps should be taken. While passing the aforesaid order, the Collector, observed and confirmed the findings of the S.D.O. that in the matter like the present one, where the petitioner has been removed form his post, the provisions contained in M.P.(C.G.)Panchayat Service (Discipline and Appeal) Rules, 1999 were not followed. It is after this

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक W.P. 1959 सन् 2003

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

order, on 28.2.2003, a Meeting of Gram Sabha was convened and in the said Meeting, the petitioner was removed as per resolution dated 7.6.2003, contained in Annexure P-1.

Learned counsel for the petitioner submits that the removal from the post of Panchayat Karmi/Secretary is a major penalty, defined under Rule 5 of the aforesaid Rules of 1999 and for imposing such a penalty, Rule 7 of the aforesaid Rules was required to be followed. His submission is that neither the earlier order nor the subsequent resolution of removal of the petitioner, are in accordance with law as the same have been passed without following necessary procedure as envisaged under Rule 7 of the aforesaid Rules.

Neither the State nor the private respondents have filed their returns in this case. The return on behalf of Chief Executive Officer (respondent No.2) has only been filed. Nothing has been pleaded in the said return about the applicability of Rule 7 of the aforesaid Rules regarding removal of the petitioner.

So far as the legal position in this regard is concerned, it has been held in the matter of ***Prakash Chandra Patel Vs. State of Chhattisgarh and others, reported in 2004 Law Times (C.G.) Pg.142*** and also in ***W.P.No.1656/2004*** the Division Bench decision of this Court, and further in ***W.P.No.2356/2004***, a decision passed by this Court that for removal of the Panchayat Karmi/Secretary, who has later on

(65)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ...W.P.1959... **सन्** **2003**

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —4—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

been declared as the Secretary of the Gram Panchayat under Section 69 (1) of the aforesaid Act, the procedure laid down under Rule 7 of the aforesaid Rules, are required to be followed. The grievance raised by the writ petitioner in this petition is squarely covered with the above decisions of the Single Bench as well as Division Bench of this Court.

In the result, this petition is allowed. The resolution about removal of the petitioner, passed in Annexure P-1 is hereby quashed. It is stated that the petitioner was removed in the month of June 2003 and he was reinstated in the month of March 2004 and as an affect of the said order, the remuneration in between this period has not been paid to the petitioner. As a consequence of this order, the petitioner shall be entitled for all the benefits.

However, if so required, the State authorities shall be free to initiate the disciplinary proceedings against the petitioner for the allegations, made against him in accordance with the provisions of the Rules referred to above.

There shall be no order as to cost.

Sd/-
Sunil Kumar Sinha
Judge

sunita

(पीछे देखिये)

21/9/09